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OFFICE OF PETITIONS

In re Application of	:	
Xiaorong He	:	
Application No. 10/008,223	:	
Filed: December 5, 2001	:	ON PETITION
Attorney Docket No. PC31297	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 10, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. ' 704.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed June 15, 2007, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on August 16, 2008. See MPEP 1215.04.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item 1.

While petitioner indicates the proposed reply is in the form of a continuation application, a review of the record fails to uncover a continuation application under 37 CFR 1.53. It is noted that a copy of the present application papers was uploaded to the file, along with the petition to revive on January 10, 2008. There is no indication that a new continuing application, including the specific reference to the present application as required by 35 U.S.C. 120, was submitted and processed by the Office. However, it appears that new filing fees were paid on January 10, 2008. If petitioner is aware that a new continuing application has, in fact, been processed and assigned a new application number, petitioner must promptly disclose the continuing application number in the renewed petition to revive.

Petitioner is also reminded that when a continuing application is filed in lieu of a reply in the abandoned application, the petition to revive should include a letter of express abandonment of the prior application, conditioned upon the granting of the petition to revive and a filing date to the continuing application.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

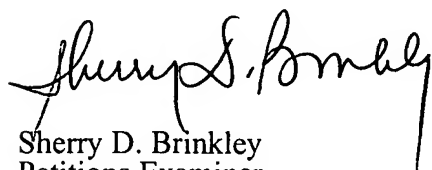
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 ATTN: Office of Petitions

By internet: EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)